

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

THOMAS JOHNSON
Plaintiff

vs.

JASON LEMON and DOUG LYNN
In their individual capacities only
Defendants.

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§ Civil Action No. 1:15-cv-00034-RP

DEFENDANTS' ORIGINAL ANSWER

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

NOW COME Defendants Jason Lemond and Doug Lynn, by and through their attorneys of record, and subject to their Motion to Dismiss and without waiving same, file this their Answer to Plaintiff's Original Complaint allege and state as follows:

DEFENDANTS' ORIGINAL ANSWER

1. Paragraphs 1, 2 and 3 of Plaintiff's Original Complaint identify the parties and no response from Defendants is required.

2. With respect to the allegations contained in paragraphs 4, 5, 6 and 7 of Plaintiff's Original Complaint, Defendants admit that this Court has proper jurisdiction.

3. Defendants deny the allegations in paragraph 8, 9, 10, 11, 12, 13, 15 and 16 of Plaintiff's Original Complaint.

4. Defendant Lynn admits he transposed the license number, otherwise denied.

5. With respect to the allegations contained in paragraphs 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33 and 34, Defendants admit that at all relevant times they were acting as police officers for the City of Cedar Park and were acting under color of state law. Otherwise, denied.

AFFIRMATIVE DEFENSES

6. Defendants deny any deprivation under color of statute, ordinance, custom, or uses of any rights, privileges, or immunity secured to the Plaintiff by the United States Constitution or 42 USC §1983, *et seq.*

7. Defendants invoke the doctrine of qualified immunity for officials sued in their individual capacity and assert that Defendants made a good faith effort to discharge their obligations and duties, in the course and scope of their employment and would show their actions were objectively reasonable in light of the law and the information possessed at that time.

8. Moreover, Defendants invoke the doctrines of official, governmental, and sovereign immunity.

9. Defendants further deny that the claims Plaintiff has stated are claims for which relief can be granted.

10. Considering the totality of the evidence, Defendants here assert that they had probable cause to seek arrest warrants for the Plaintiff. Such probable cause and/or the actions by the judges reviewing those probably cause affidavits and issuing arrest warrants defeats Plaintiff's claims.

11. Defendants reserve the right to raise any additional affirmative defenses that become apparent through the factual development of this case.

12. Defendants further assert the limitations and exceptions of the Texas Tort Claims Act.

13. Defendants further assert the limitations of CPRC §41.0105.

14. Defendants assert the limitation on damages under the provisions of Chapter 18, Chapter 33 and Chapter 41 of the Texas Civil Practice and Remedies Code, including but not limited to Sections 18.091, 33.013, 33.015, 33.016, 41.003, 41.008, and 41.0105.

JURY DEMAND

15. In the unlikely event that this case is not dismissed, Defendants demand a trial by jury.

WHEREFORE, PREMISES CONSIDERED, Defendants respectfully request a judgment dismissing Plaintiff's Original Complaint, or in the alternative, that this Court enters a judgment in favor of the Defendants and against Plaintiff,

and for such other and further relief to which the Defendants may show themselves justly entitled.

Respectfully submitted,

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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of February, 2015, I electronically filed and served the foregoing document with the clerk of the court using the CM/ECF System, and a true and correct copy has been sent to the following counsel via facsimile:

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